



# **Law, Politics and Public Policy**

**Law 454 HS**

**Mr. Tony Clement  
&  
Professor Lorne Sossin**

**- Volume 1 -**

**University of Toronto  
Faculty of Law**

**Spring 2004**

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**Law, Politics and Public Policy**

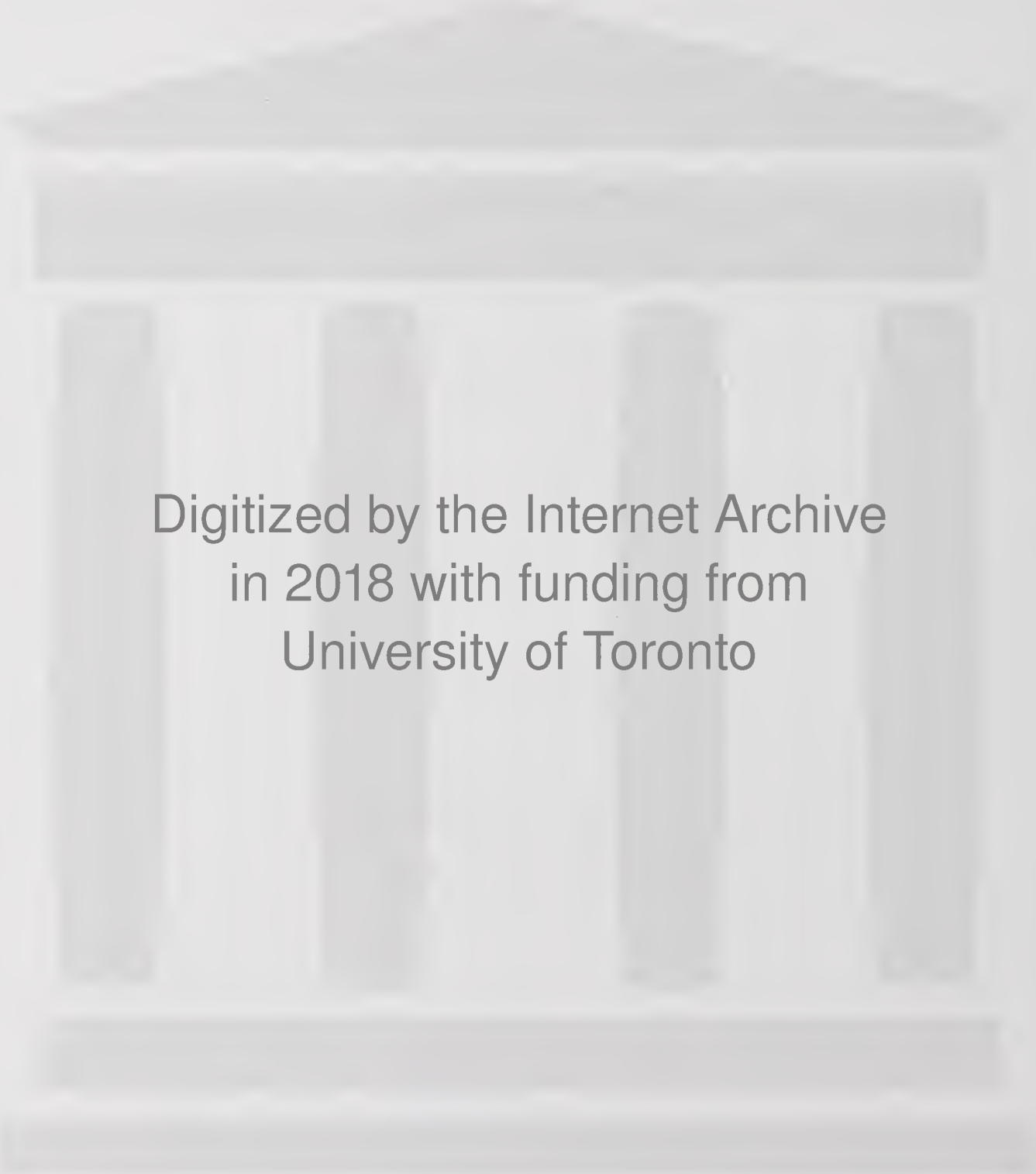
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# **LAW, POLITICS AND PUBLIC POLICY**

**Law 454 HIS**

**Winter 2004**

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**Office Hours: Prof. Sossin: Mondays 10-12pm; Mr. Clement: Tuesdays 2-3pm.**

This seminar explores the legal, political and bureaucratic forces which shape public policy. We will consider the various overlapping and dynamic relationships which influence the development of policy priorities between the centre (Premier's Office, Cabinet Office, etc) and the line Ministries, between the political executive and the civil service, between the legislative and judicial branches, between stakeholders and Ministers, and between different levels of Government. We will emphasize the role of competing institutions and interests, ideas and ideologies, in the development of party platforms, government mandates and ministry priorities. We then conclude the course by looking at a series of case studies (health policy, social welfare policy, etc) in order to examine the different perspectives from which the intersection of law and public policy might be viewed.

## **Assignments/Grading**

Students will be asked at the beginning of the seminar to select a policy file which most interests them this could involve an issue in a provincial policy area (health, education, justice, social welfare, energy, etc), a federal policy area (foreign affairs, defence, trade, immigration, etc) or an area which depends on federal/provincial cooperation (environment, culture, etc) and which they will track through the course.

## **Evaluation:**

Class Participation 20%

Briefing Note 20% (this will be a short 5-7 page assignment, due shortly after reading week, in which students will map the various directions in which government could take on their policy file)

Options Paper 60% (this will be a more substantive 20-25 page paper in which students defend the policy direction they are recommending).

## **Reading materials:**

Readings are in the course pack available in student bookstore. There are also some excellent on-line resources in this field (working papers, bibliographies, etc) from policy "think-tanks" (C.D. Howe Inst., Caledon Inst., etc). Links to a number of these may be found in the "useful links" section of Professor Sossin's homepage at <http://www.law.utoronto.ca/faculty/sossin> The magazine Policy Options also has a diverse range of articles relevant to the course which can be downloaded at <http://www.irpp.org/po/>



## Outline and Reading List

### 1. Introduction: (January 9)

- Orientation to the Course
- What is public policy?
- The intersection of law, politics and public policy: discussion of broad themes of the course
- Contexts of public policy (e.g. restructuring in the public sector, deficits/surplus, etc)
- Discussion of students' "policy file" for the term

### 2. Anatomy of a Public Policy (January 16)

- Where do policy ideas come from (stakeholders, party platforms, ministry policy branches, etc)?
- What are the challenges in implementation? Why are some policies pursued and others abandoned
- What is the relevance of the policy/administration distinction?

#### *Reading:*

D. Cameron & G. White, *Cycling into Saigon: The Conservative Transition in Ontario* (Vancouver: UBC Press, 2000) Vol 1, pp. 1-11

L. Pal, *Beyond Policy Analysis: Public Issues Management in Turbulent Times* (Toronto: Nelson, 2001), Vol 1, pp. 12-32

P. Monahan, *Storming the Pink Palace - The NDP in Power: A Cautionary Tale* (Toronto: Lester, 1995), Vol. 1, pp. 33-53

Patient Bill of Rights clippings, Vol. 1, pp. 54-62

### 3. Institutions and actors/: Federalism and public policy (January 23)

- Roles and responsibilities of provinces, territories and the federal government
- Collaborative federalism: the 'joint decision trap?'
- The scope and importance of federal-provincial meetings

#### *Reading:*

The Social Union Framework Agreement (1999), Vol 1, pp. 63-67

SUFA Three Year Review (2003), Vol 1, pp. 68-87

The Health Policy Agreement (2000), Vol 1, pp.88-93

S. Phillips, "SUFA and Citizen Engagement" IRPP *Policy Matters* (2001), Vol 1, pp. 94-129

David Cameron and Richard Simeon, "Intergovernmental Relations and Democratic Citizenship," in B. Guy Peters and Donald Savoie, eds. *Governance in the Twenty-first Century: Revitalizing Public Service*, Canadian Centre for Management Development/McGill-Queen's University Press, 2000), Vol 1, pp.130-54.

Alain Noel, "Is Decentralization Conservative: Federalism and the Contemporary debate on the Canadian Welfare State." In Robert Young, eds., *Stretching the Federation: The Art of the State in Canada*. (Kingston: Institute of Intergovernmental relations, 1999), Vol 1, pp. 155-170

P. Boothe, "Renewal in the Centre: Working with Ontario's Federation Partners" Report to the Panel on the Role of Government, Research Papers Series (2003), Vol 1, pp. 171-222

### Recommended

- Michael J. Trebilcock and Rambod Behboodi, "The Canadian Agreement on Internal Trade: Retrospect and prospect," and Katherine Swinton, "Law, Politics, and the Enforcement of the Agreement on Internal Trade," in Daniel Schwanen and Michael Trebilcock, eds., *Getting There: An Assessment of the Agreement on Internal Trade*. Toronto: C. D. Howe Institute, 1995. 20-89, 196-210.
- Wayne MacKay, "The Supreme Court of Canada and Federalism: Does/should Anyone Care any more?" Paper presented at Supreme Court of Canada Conference, October 2000.
- L. Sossin, "Salvaging the Welfare State? The Prospects for Judicial Review of the Canada Health & Social Transfer" (1998) 21 *Dalhousie Law Journal* 141-198
- Sujit Choudhry, "Bill 11, the *Canada Health Act* and the Social Union: The need for Institutions," (2000) 38 *Osgoode Hall Law Journal* 40-99.
- , "The Enforcement of the Canada Health Act," 1996 41 *McGill L. J.* 462.
- Herman Bakvis and Grace Skogstad, eds., *Canadian Federalism: Performance, Effectiveness, and Legitimacy*. Don Mills: Oxford University Press, 2002.
- Steven Kennett, "Meeting the Intergovernmental Challenge of Environmental Assessment," in Patrick Fafard and Kathryn Harrison, eds., *Managing the Environmental Union: Intergovernmental relations and Environment Policy in Canada*. Kingston: School of Policy Studies, 2000. 105-132.

### 4. Institutions and actors: Bureaucracy and regulatory agencies in the policy process (January 30)

- Policy advice, implementation, evaluation
- 'New Public Management'
- Down-sizing, out-sourcing, privatization
- Regulation and de-regulation
- The role of expertise in the policy process
- Procedural fairness in administrative law
- Soft law

### Reading:

- D. Savoie, *Breaking the Bargain: Public Servants, Ministers and Parliament* (Toronto: U of Toronto Press, 2003), Vol. 1, pp. 223-35
- L. Sossin, "Speaking Truth to Power: The Search for Bureaucratic Independence in Canada (unpublished paper, 2003) (to be posted on course webpage at <http://www.law.utoronto.ca/faculty/sossin>)
- Speech by Premier Mike Harris to Deputy Ministers, 27 June 1995. in David R. Cameron and Graham White, *Cycling Into Saigon: The Conservative Transition in Ontario*, (Vancouver: UBC Press, 1999), Vol 1, pp.236-38
- D. Savoie, "Strengthening the Policy Capacity of Government" Report to the Panel on the Role of Government, Research Paper Series (2003), Vol 1, pp.239-290
- Michael H. Hall and Paul Reed, "Shifting the Burden: How Much can Government Download to the Private Sector?" *Canadian Public Administration* 41: (1998), Vol 1, pp. 291-301



*Fraser v. PSSRB* [1985] 2 S.C.R. 455, Vol 1, pp. 302-15  
*Affidavit of Nicolas d'Ombrain, George v. Harris*, Vol 1, pp. 316-24

*Recommended:*

Evan Potter, "Treasury Board as a Management Board: The Re-invention of a Central Agency," in *How Ottawa Spends 2000-2001*, 95-130.

D. Mullan & A. Ceddia, "The Impact on Public Law of Privatization, Deregulation, Outsourcing and Downsizing: A Canadian Perspective" (2003) 10 *Indiana Journal of Global Political Studies* 199

David Osborne and Ted Gaebler, *Reinventing Government*, Reading, MA: Addison-Wesley, 1992. 332-47.

L. Sossin, "Discretion Unbound: Reconciling the *Charter* and Soft Law" (2003) 45 *Canadian Public Administration*

H. Brinton Milward, and Keith Provan, "The Hollow State: Private Provision of Public Services," in Helen Ingram and Steven Smith, eds., *Public Policy for Democracy*, Washington: The Brookings Institution, 1993. 222-237.

**5. Institutions and actors: First Ministers, cabinets and legislatures in the policy process (February 6)**

- Relationship between Premier and Cabinet
- Relationship between Cabinet and Caucus
- Role of Opposition Parties (private members bills, critics, etc)
- Cabinets and cabinet ministers: just another 'focus group?'

**6. Institutions and actors: Premier's Office, Political Staff the policy process (February 13) (Guest Panel)**

- Concentration of power in the PO/PMO
- Role of Minister political staff
- Drafting of Throne Speech, etc
- Political calculations in the policy process
- Role of Cabinet Office/PCO

**February 16-20, 2004 Reading Week**

**7. Law and Politics of Inquiries: the SARS Inquiry (February 27) (\*Briefing Note Assignment Due)**

- Politics of deciding to call an inquiry
- Drafting terms of reference: how narrow/how broad?
- Role of lawyers, funding intervenors and litigation in shaping the inquiry process
- Policy implications of inquiry reports – which sit on the shelf and which are put into action and why

**8. Institutions and actors: The courts, the *Charter* and public policy (March 5)**

- Judges as policy-makers
- Impact of the Charter on public policy
- 'Activism' and 'restraint'
- role of the AG in policy process



**9. Institutions and actors: Interest groups and social movements in the policy process (March 12)**

- Citizen and group mobilization
- Consultation
- Policy networks

**10. Case studies1: Social Welfare Policy (March 19)**

**11. Case studies 2: Health Policy (March 26)**

**12. Conclusion (discussion of Options Papers)**

